

IN THE MATTER OF JOHN S. AND ALBERT SEAMAN MARQUEN DOCUMENT NO.

Issued to: John P. Stranik

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1526

John P. Stranik

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 19 February 1965, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for six months on twelve months' probation upon finding him guilty of misconduct. The two specifications found proved allege that while serving as a Third Assistant Engineer on the United States SS GREEN COVE under authority of the license above described, on 30 July 1962, Appellant failed to perform his duties from 0800 to 1600 while at sea; on 18 August 1962, Appellant deserted the vessel at the port of Philadelphia, Pennsylvania.

The hearing did not begin until 8 November 1963, apparently due primarily to difficulty in locating Appellant. At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence excerpts from the Shipping Articles, certified copies of entries in the Official Logbook, and the deposition of the Master. The deposition of the Chief Engineer had been requested by the Government (R. 21) but was not obtained.

In defense, Appellant testified that he was physically incapable of working on 30 July; about five minutes after the Master refused Appellant's request to be paid off on 18 August, the Chief Engineer told Appellant, without explanation, that he was "fired" and to leave the ship; the Chief Engineer had the authority to discharge Appellant but he did not know whether or not the Chief Engineer had the authority to sign Appellant off the Shipping Articles.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and two specifications had been proved. He then entered the order suspending all documents, issued to Appellant, for a period of six months on twelve months' probation.

Among other points raised on appeal, it is contended that Appellant was not guilty of desertion because he believed the Chief Engineer had the authority to

discharge Appellant.

Appearance: Pressman and Scribner of New York City, by Ned R. Phillips, Esquire, of Counsel.

### Opinion

Appellant admits that he left the ship with the intent not to return, but contends that his conduct was justified on the basis of his belief that the Chief Engineer had discharged him and that the Chief Engineer possessed the authority to do so.

Therefore, the case will be remanded to obtain the deposition of the Chief Engineer, if possible, which was requested by the Investigating Officer but was not obtained. No mention was made of this omission when the Investigating Officer rested the government's case (R. 49) or later. The testimony of the Chief Engineer should help to clarify what occurred between himself and Appellant after the latter saw the Master and before Appellant left the ship. (There is some evidence of prior friction between the Chief Engineer and Appellant.)

The Examiner neither made a finding of fact that the Chief Engineer "fired" Appellant, as he testified, nor made a finding as to Appellant's credibility on this issue, although the Examiner did state, in his decision, at page 4: "It may very well be that the chief engineer had told the person charged he was fired. . . ." Appellant's testimony supplies no details concerning this alleged "firing".

After additional proceedings, the Examiner shall again evaluate the record in order to determine whether Appellant's departure from the ship constituted misconduct or whether there was reasonable cause (justification) for such action.

### Order

The order of the Examiner dated at New York, New York, on 19 February 1965, is VACATED. The record is REMANDED with directions to reopen the hearing for further proceedings not inconsistent with this decision.

W. D. SHIELDS  
Vice Admiral, U.S. Coast Guard  
Acting Commandant

Signed at Washington, D. C., this 18th day of November 1965.

## INDEX

### DEFENSES

- desertion, discharge by Chief Engineer
- discharge by officer
- inability to work

### DEPOSITION

- remand to obtain

### DESERTION

- discharge by officer
- firing by officer
- justification claimed

### EVIDENCE

- credibility of, failure to evaluate

### FAILURE TO PERFORM DUTIES

- inability to work, defense of

### REMAND

- credibility evaluation required
- credibility findings absent
- deposition to be obtained
- evidence to be produced

### REMANDED CASES

### WITNESSES

- credibility findings, remanded for
- credibility of, failure to evaluate